

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

SECOND APPEAL NO. 201 OF 2018

Ajay S/o. Sureshrao Mandavgade,
Aged about 42 years, Occ. Agriculturist,
R/o. Khed, Tq. Morshi, Dist. Amravati.

... **Appellant**

.. **Versus** ..

1) Sau. Shantabai Madhukarrao Gulhane,
Aged about 63 years, Occ. Household,
R/o. Malipura, Morshi,
Tq. Morshi, Dist. Amravati.

2) Sau. Prabha W/o. Kisanrao Shirbhate,
Aged about 58 years, Occ. Household,
R/o. Loni, Tq. Warud, Dist. Amravati.

3) Smt. Suman Wd/o. Madhukarrao Gulhane,
Aged about 57 years, Occ. Agriculturist,
R/o. Khed, Tq. Morshi, Dist. Amravati.
**[Respondent No. 3 deleted as per
order dated 20/01/2023]**

4) Baban S/o. Madhukarrao Gulhane,
Aged about 32 years, Occ. Agriculturist,
R/o. Khed, Tq. Morshi, Dist. Amravati.

5) Nilesh S/o. Madhukarrao Gulhane,
Aged about 29 years, Occ. Agriculturist,
R/o. Khed, Tq. Morshi, Dist. Amravati

[Respondent nos. 3, 4 and 5

R/o. Near Mangal Karyalay,
Jarud Road, Mangruli Peth,
Tq. Warud, District Amravati

**Corrected Address of respondent nos. 3, 4 and 5
as per order dated 22/11/2018]**

6) Swapnil S/o. Rameshrao Dhole,
Aged about 42 years, Occ. Agriculturist,
R/o. Mokaspura, Morshi,
Tq. Morshi, Dist. Amravati

7) Smt. Kisanbai Wd/o. Baburao Jawre,
Aged about 42 years, Occ. Agriculturist,
R/o. Telipura, Tq. Aashti, Dist. Wardha.

..Respondents

Shri C.A.Babrekar, Advocate for appellant.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 20/03/2023

ORAL JUDGMENT

Heard learned counsel for the appellant finally at the stage of admission.

2. The present appeal is filed being aggrieved by the order 02/02/2018 passed by learned District Judge-3, Amravati below Exh. 1 in M.C.A. No. 82/2015. The appellant herein had applied before learned District Judge, Amravati for condonation of delay of 31 days in filing appeal against the judgment and decree dated 20/02/2015 passed in Reg.Civil Suit No. 19/2011 by learned Joint Civil Judge, Junior Division, Morshi.

3. It is the case of the appellant that the original suit was filed by Shantabai Gulhane and Prabha Shirbhate (respondent nos. 1 and 2 respectively in present appeal) for partition against the present appellant and five others. The suit came to be partly

decreed and partition was directed to be effected. Being aggrieved by the said the judgment and decree, defendant no. 5 (present appellant) preferred the First Appeal along with application for condonation of delay as there was delay in filing the appeal. There was delay of 31 days. It is contended by the appellant before First Appellate Court that he was seriously ill since 18/02/2015 to 17/04/2015. The suit was partly decreed on 20/2/2015. After coming to the knowledge of appellant about passing of the judgment, he applied for certified copy on 15/04/2015. Along with application for condonation of delay, the applicant/appellant had also placed on record the medical certificate to show that since 18/2/2015 to 17/04/2015, he was ill. The respondent opposed the application. The learned District Judge, Amravati rejected the application for condonation of delay of 31 days on the ground that the judgment was passed on 20/02/2015 and the applicant applied for certified copy on 15/04/2015 and he received the same on 21/04/2015.

4. The medical certificate showing that the applicant was suffering from anemia for the period from 18/02/2015 to 17/04/2015. The applicant had applied for certified copy on 15/04/2015. As such, learned District Judge, Amravati came to the conclusion that the applicant has not stated as to when he had got the knowledge of judgment. Learned District Judge, Amravati also came to the conclusion that, the contentions of the application are inconsistent with the medical certificate and the applicant has not come with the clean hand. Accordingly, learned

District Judge, Amravati rejected the application for condonation of delay.

5. On perusal of the application, it appears that defendant no. 5/present appellant claims to have purchased the house in question by registered sale deed dated 17/03/2011 which is dwelling house. The applicant had contacted the plaintiffs and the defendants whereupon it was informed to the applicant by the plaintiffs and the defendants that the matter will be settled amicably. The applicant was seriously ill from 18/02/2015 to 17/04/2015. The learned First Appellate Court rejected the application for condonation of delay mainly on the ground that, it has not disclosed when the applicant got the knowledge about passing of the judgment. The question here is that, he is not claiming condonation of delay on that ground, but on the ground that he was ill from 18/02/2015 to 17/04/2015.

6. When the application was supported by medical certificate, it ought not to have rejected same specifically when the rights in immovable property involved in the matter. It is not the case that he was not diligent or he was getting benefit by delaying the matter. As such, liberal approach ought to have taken by the learned District Judge, Amravati. The person should not be deprived of agitating his right by throwing him at the threshold on this technical ground. In my opinion, the order dated 02/02/2018 passed by learned District Judge-3, Amravati is erroneous and unjustified. Learned District Judge has failed to appreciate that the application for certified copy can even be filed by the counsel for parties. As such, filing of application for

certified copy on 15/04/2015 would not come in the way of appellant as he has shown that he was ill from 18/02/2015 to 17/04/2015. The delay caused is neither inordinate nor intentional or malafide. His claim to have purchased property by registered sale deed can't be thrown at threshold on such technical ground. As such, the order dated 02/02/2018 passed by learned District Judge-3, Amravati below Exh. 1 in M.C.A. No. 82/2015 is liable to be set aside. The learned First Appellate Court ought to have considered the appeal on merits by condoning the delay. Accordingly, I answer the substantial question of law in negative and proceed to pass the following order:-

ORDER

- 1) The Second Appeal is allowed.
- 2) The order dated 02/02/2018 passed by learned District Judge-3, Amravati below Exh. 1 in MCA No. 82/2015 is hereby quashed and set aside.
- 3) Delay in filing First Appeal is hereby condoned.
- 4) Registry of District Court, Amravati is directed to register the First Appeal.
- 5) The appeal stands disposed of.

[SMT. M.S. JAWALKAR, J.]